

4/1/80

CIVIL

COURT'S INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY:

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you the instructions of the court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by me.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion.

Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life.

The law is no respecter of persons, and all persons stand equal before the law and are to be dealt with as equals in a court of justice.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life.

A corporation is entitled to the same fair trial at your hands as is a private individual.

The law is no respecter of persons, and all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

NO CORPORATE PARTY INVOLVED

CORPORATE PARTY

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case.

The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case.

What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience.

In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the

Now, I have said that you must consider all of the evidence.

This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to this testimony.

In weighing the testimony of a witness you should consider his relationship to the plaintiff or to the defendant; his interest, if any, in the outcome of the case; his manner of testifying; his opportunity to observe or acquire knowledge concerning the facts about which he testified; his candor, fairness and intelligence; and the extent to which he has been supported or contradicted by other credible evidence.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact.

You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

Your verdict must represent the considered judgment of each juror.

In order to return a verdict, it is necessary that each juror agree thereto.

In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment.

Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to re-examine your own viewes, and change your opinion, if convinced it is erroneous.

But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of

Remember at all times you are not partisans.  
You are judges -- judges of the facts.  
Your sole interest is to seek the truth from the  
evidence in the case.

Upon retiring to the jury room you should first  
select one of your number to act as your foreman or  
forewoman who will preside over your deliberations and  
will be your spokesman here in court.

Forms of verdict have been prepared for your convenience.

[Explain verdicts]

You will take the verdict forms to the jury room and  
when you have reached unanimous agreement as to your  
verdict, you will have your foreman fill it in, date and  
sign the appropriate form, and then return to the courtroom.

If, during your deliberations, you should desire to  
communicate with the court, please reduce your message or  
question to writing signed by the foreman or forewoman, and  
pass the note to the marshal who will bring it to my attention.

I will then respond as promptly as possible, either in  
writing or by having you returned to the courtroom so that  
I can address you orally.

I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

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It is proper to add a final caution.

Nothing that I have said in these instructions -- and nothing that I have said or done during the trial -- has been said or done to suggest to you what I think your verdict should be.

What the verdict shall be is your exclusive duty and responsibility.

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NOTE: This is NOT a part  
of Pattern Instruction

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SINGLE  
CLAIM OF  
ONE PLAINTIFF

The burden is on the plaintiff in a civil action such as this to prove every essential element of his claim by a "preponderance of the evidence."

MULTIPLE  
CLAIMS OR  
COUNTERCLAIMS

In a civil action such as this each party asserting a claim, as hereafter described, has the burden of proving every essential element of his claim by a "preponderance of the evidence."

A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true.

MULTIPLE CLAIM  
OR COUNTERCLAIM

Where more than one claim is involved, as in this case, you should consider each claim, and the evidence pertaining to it, separately, as you would had each claim been tried before you separately.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

SINGLE  
CLAIM OF ONE  
PLAINTIFF

If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence, the jury should find for the defendant as to that claim.

MULTIPLE  
CLAIMS OR  
COUNTERCLAIM

If a preponderance of the evidence does not support each essential element of a claim, then the jury should find against the party having the burden of proof as to that claim.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO.3:14-CV-274-NBB-JAA

CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

JURY INSTRUCTION NO. 1

A "stipulation" is an agreement. When there is no dispute about certain facts, the attorneys may agree or "stipulate" to those facts. You must accept a stipulated fact as evidence and treat that fact as having been proven here in court.

OK

*Pattern Jury Instruction 2.3, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO. 3:14-CV-274-NBB-JAA

CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

DEFENDANTS

JURY INSTRUCTION NO. 2

In determining the weight to give to the testimony of a witness, consider whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony given at the trial.

A simple mistake by a witness does not necessarily mean that the witness did not tell the truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

*dk*

*Pattern Jury Instruction 2.11, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO.3:14-CV-274-NBB-JAA

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JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

DEFENDANTS

JURY INSTRUCTION NO. 3

You are required to evaluate the testimony of a law-enforcement officer as you would the testimony of any other witness. No special weight may be given to his or her testimony because he or she is a law enforcement officer.

OK

*Pattern Jury Instruction 2.15, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO. 3:14-CV-274-NBB-JAA

CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

DEFENDANTS

JURY INSTRUCTION NO. 5

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you and the facts from a preponderance of all the evidence, both direct and circumstantial

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*Pattern Jury Instruction 3.3, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

DK

PROPOSED JURY INSTRUCTION D-2

~~As to James Jones~~ Each defendant is entitled to be considered individually, without respect to liability of the other Plaintiff Thompson claims Defendant ~~Jones~~ violated the Fourth Amendment right to be protected from an unreasonable seizure. Plaintiff Thompson claims that the way Defendant ~~Jones~~ arrested him on February 12, 2014 violated his constitutional rights. To establish this claim, Plaintiff must show that the arrest was unreasonable, by each individual.

A warrantless arrest, such as the one involved in this case, is considered unreasonable under the Fourth Amendment when, at the moment of the arrest, there is no probable cause for the defendant to reasonably believe that a crime has been or is being committed. Probable cause does not require proof beyond a reasonable doubt, but only a showing of a fair probability of criminal activity. It must be more than bare suspicion, but need not reach the 50% mark.

The reasonableness of an arrest must be judged based on what a reasonable officer would do under the circumstances, and does not consider Defendant ~~Jones~~ state of mind. The question is whether a reasonable officer would believe that a crime was, or was being, committed based on the facts available to that officer at the time of the arrest.

If you find that Plaintiff has proved by a preponderance of the evidence that Defendant ~~Jones~~ lacked probable cause to make the arrest on February 12, 2014, then Defendant ~~Jones~~ violated Plaintiff Thompson's constitutional right to be free from unreasonable arrest or "seizure" and you must then consider whether Defendant ~~Jones~~ is entitled to qualified immunity, which is a bar to liability that I will explain later.

If Plaintiff failed to make this showing, then the arrest was constitutional, and your verdict will be for Defendant ~~Jones~~ on the unreasonable arrest claim.

OK

### PROPOSED JURY INSTRUCTION D-3

Each individual defendant is entitled to have the defense of Qualified Immunity considered independently of any other defendant.

As to any claim for which Plaintiff Thompson has proved each essential element against Defendant Jones, you must consider whether Defendant James Jones is entitled to what the law calls "qualified immunity."

Qualified immunity bars a defendant's liability even if he violated a plaintiff's constitutional rights. Qualified immunity exists to give government officials breathing room to make reasonable but mistaken judgments about open legal questions. Qualified immunity provides protection from liability for all but the plainly incompetent government officers, or those who knowingly violate the law.

It is Plaintiff Thompson's burden to prove by a preponderance of the evidence that qualified immunity does not apply in this case. Qualified immunity applies if a reasonable officer could have believed that the arrest, was lawful in light of clearly established law and the information Defendant Jones possessed. But Defendant Jones is not entitled to qualified immunity if, at the time of the arrest, a reasonable officer with the same information could not have believed that his actions were lawful.

Law enforcement officers are presumed to know the clearly established constitutional rights of individuals they encounter.

In this case, the clearly established law at the time was the right to be free from an unlawful arrest. However, no violation of the right to be free from unlawful arrest has occurred when it is supported by probable cause. There also can be no violation of the right to be free from an unreasonable stop and search when supported by a reasonable suspicion that a crime has been or is

being committed.

If, after considering the scope of discretion and responsibility generally given to an officer in performing their duties and after considering all of the circumstances of this case as they would have reasonably appeared to Defendant James Jones at the time of the arrest, you find and that Plaintiff Thompson failed to prove that no reasonable officer could have believed that the arrest was lawful, then Defendant James Jones is entitled to qualified immunity, and your verdict must be for Defendant James Jones on those claims. But if you find that Defendant James Jones violated Plaintiff's constitutional rights and that Defendant is not entitled to qualified immunity as to that claim, then your verdict must be for Plaintiff on that claim.

After having considered qualified immunity and defendant Jones, as to any claim for which Plaintiff Thompson has proved each essential element against Defendant Hamp, you must consider whether Defendant Hamp is entitled to what the law calls "qualified immunity."

Qualified immunity bars a defendant's liability even if he violated a plaintiff's constitutional rights. Qualified immunity exists to give government officials breathing room to make reasonable but mistaken judgments about open legal questions. Qualified immunity provides protection from liability for all but the plainly incompetent government officers, or those who knowingly violate the law.

It is Plaintiff Thompson's burden to prove by a preponderance of the evidence that qualified immunity does not apply in this case. Qualified immunity applies if a reasonable officer could have believed that the arrest, was lawful in light of clearly established law and the information Defendant Hamp possessed. But Defendant Hamp is not entitled to qualified immunity if, at the time of the arrest, a reasonable officer with the same information could not have believed that his actions were lawful.

Law enforcement officers are presumed to know the clearly established constitutional rights of individuals they encounter.

In this case, the clearly established law at the time has not been identified by the Plaintiff Thompson as it relates to Hamp.

If, after considering the scope of discretion and responsibility generally given to an officer in performing their duties and after considering all of the circumstances of this case as they would have reasonably appeared to Defendant Hamp at the time of the arrest, you find and that Plaintiff Thompson failed to prove that no reasonable officer could have believed that the arrest was lawful, then Defendant Hamp is entitled to qualified immunity, and your verdict must be for Defendant Hamp on those claims. But if you find that Defendant Hamp violated Plaintiff's constitutional rights and that Defendant is not entitled to qualified immunity as to that claim, then your verdict must be for Plaintiff on that claim.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO.3:14-CV-274-NBB-JAA

CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

DEFENDANTS

JURY INSTRUCTION NO. 11

You may award damages for any ~~bodily~~ injury that Plaintiff Thompson sustained and any pain and suffering, ~~disability, disfigurement, mental anguish, and/or loss of~~ ~~capacity~~ for enjoyment of life that Plaintiff Thompson experienced in the past or will experience in the future as a result of the bodily injury. No evidence of the value of intangible things, such as mental or physical pain and suffering, has been or need be introduced. You are not trying to determine value, but an amount that will fairly compensate Plaintiff Thompson for the damages <sup>he</sup> suffered. There is no exact standard for fixing the compensation to be awarded for these elements of damage.

OK

*Pattern Jury Instruction 15.3, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO. 3:14-CV-274-NBB-JAA

CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

DEFENDANTS

JURY INSTRUCTION NO. 16

The defendant claims he was entraped into drug with a ~~supposed license~~. Entrapment occurs when state authorities induce an individual to commit an offense he was not otherwise predisposed to commit. The very idea of entrapment suggests that the person would have never committed a crime had he not been persuaded or otherwise enticed.

Where the defendant claims entrapment, we inquire first whether the offense was induced by a government agent; and, second, whether the defendant was predisposed to commit the type of offense charged. A defendant is considered predisposed if he is "ready and willing to commit the crimes such as are charged in the indictment, whenever opportunity was afforded".

OK

*Barnes v. State*, 493 So.2d 313, 315 (Miss.1986).

**PROPOSED JURY INSTRUCTION D-11**

The plaintiffs cannot recover for simple negligence. If you consider that the defendants were negligent, but that such negligence did not rise to a constitutional violation, then you must find in favor of the defendants and against the plaintiffs.

OK

Coon v. Ledbetter, 780 F.2d 1158 (1986)

evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

*Pattern Jury Instruction 3.4, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

MICHAEL THOMPSON

PLAINTIFF

v.

CIVIL ACTION NO.3:14-CV-274-NBB-JAA

CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"

DEFENDANTS

JURY INSTRUCTION NO. 7

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

*Pattern Jury Instruction 2.3, Civil Cases, U.S. Fifth Circuit, 1983 Edition*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**MICHAEL THOMPSON**

**PLAINTIFF**

v.

**CIVIL ACTION NO.3:14-CV-274-NBB-JAA**

**CALVIN HAMP, in his individual capacity,  
JAMES JONES, in his individual capacity, and  
UNKNOWN DEFENDANTS "A", "B" and  
"C"**

**DEFENDANTS**

**JURY INSTRUCTION NO. 6**

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor on the witness stand, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or she made statements at other times and places contrary to those made here on the witness stand? You must give the testimony of each witness the credibility that you think it deserves.

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the